

1 United States Bankruptcy Court
2 Eastern District Of Washington
3

4 In Re:)

5 ANTHONY W. COURSON)

Main Case
Number:

04-03686

6)
7)
8 Debtor.)

9 WELLS FARGO BANK, N.A.,)
10 A National Bank,)

Adversary
Number:

A04-00247

11)
12 Plaintiff(s))

13 vs.)

14 ANTHONY W. COURSON, aka)
15 RANDALL'S II AUTO SALES,)
16 STEPHANIE COURSON and)
17 John Doe, Holders of Its)
18 Security; husband and)
19 wife and their marital)
20 community, GESA CREDIT)
21 UNION, SAFECO INSURANCE,)
22 COMPANY OF AMERICA,)

23 Defendants.)
24)
25)
26)
27)
28)

OPINION

29 This matter comes before the court upon motions for summary
30 judgment. The plaintiff Wells Fargo Bank, N.A. (hereinafter Wells
31 Fargo) is suing Gesa Credit Union (hereinafter Gesa) and Safeco
32 Insurance Company of America (hereinafter Safeco) for insurance
33 proceeds arising from the damage and loss to Wells Fargo's collateral,

OPINION
06/24/09

1 a boat and trailer, at one time owned by the debtor Anthony Courson.

2
3 **PROCEDURAL HISTORY**
4

5 This adversary proceeding relates to the bankruptcy case of
6 Anthony Courson. The court has jurisdiction to decide the matter
7 pursuant to 28 U.S.C. § 157(a). The parties have consented to the
8 court entering a final judgment in this matter pursuant to 28
9 U.S.C. 157(c)(2). [AP #258].

10 The debtors Anthony and Stephanie Courson filed a Chapter 7
11 case. Wells Fargo instituted this adversary proceeding against the
12 Coursons, alleging that they had disposed of Wells Fargo's
13 collateral, a boat and trailer, without permission and without
14 accounting for the proceeds. A judgment was rendered in this court
15 against the Coursons for \$37,874.89, which determined that the
16 obligation was non dischargeable.

17 Subsequent to the entry of judgment against Coursons, Wells
18 Fargo learned that the boat and trailer had been sold to Jeff
19 Buxton. The sale to Buxton had been financed by Gesa and the
20 collateral insured by Safeco. The collateral was destroyed and
21 Safeco paid Gesa \$29,200.00 for the loss.

22 Wells Fargo added Gesa and Safeco as parties defendants in
23 this adversary proceeding to recover from them the insurance
24 proceeds of Wells Fargo's collateral. Wells Fargo, Gesa and Safeco
25 have all moved for summary judgment.
26
27

28 OPINION
06/24/09

1 FACTS AND PLEADINGS

2
3 1. Anthony Courson purchased a boat and trailer on June 26,
4 2000. He executed an installment sales contract as buyer with
5 Randall's Auto Sales Inc. as seller, and this contract was assigned
6 to First Security Bank.¹

7 2. The boat and trailer are subjects of Washington State
8 Certificates of Ownership applied for July 24, 2000. These
9 certificates reflect "Tony Courson" registered owner "First
10 Security Bank legal owner."²

11 3. Wells Fargo alleges that it acquired First Security's
12 interest in the Courson contract, and that it is the successor in
13 interest to First Security's secured position on the boat and
14 trailer. The court could find no document or assignment in the
15 record supporting this allegation. Gesa has not conceded that
16 Wells Fargo is the successor in interest of First Security Bank.³

17 4. "Randall's" issued a "Vehicle Purchase Order" for the boat
18

19 ¹[AP #147-1 pg. 2-3]

20 ²[AP #147-1 pg. 15-16]

21 ³Gesa denied these allegations in its answer to Wells Fargo's Second Amended
22 Complaint. [AP# 97 pg. 2, ¶s 2, 3 & 4]. Wells Fargo argues that Gesa subsequently
23 admitted that Wells Fargo was the successor in interest of Security Bank by a
24 statement in a brief filed by Gesa in support of summary judgment [AP# 139 pg. 2,
25 ln 3]. Gesa argued in its memorandum in Response, that Wells Fargo has presented
26 no evidence to support this allegation. [AP# 239 pg. 7, ln 21-25]. Gesa's counsel
27 maintained this position at the initial oral argument of this summary judgment
28 motion on March 24, 2009. In a subsequent hearing on April 22, 2009, the court
inquired of Wells Fargo where the evidence was that established its position as
successor to Security Bank. Wells Fargo's response to this inquiry [AP# 254] fails
to provide such evidence. For purposes of this decision only, the court will assume
that Wells Fargo is able to prove that it is the successor of Security Bank and
entitled to enforce the security interest at issue.

OPINION

06/24/09

1 and trailer dated January 21, 2003. The purchaser listed on the
2 order was Jeff Buxton.⁴ The boat and trailer identified in this
3 purchase order is the same boat and trailer purchased by Courson
4 and financed by Security Bank.

5 5. Buxton purchased the boat and trailer and the purchase was
6 financed by Gesa Credit Union. Gesa's check issued to finance this
7 purchase was made payable to "Jeff M. Buxton and Randalls" dated
8 2/07/03 in the sum of \$34,024.00.⁵ In this process, Buxton
9 executed an "Open End Credit Plan Advance/Revolving Request" that
10 includes a security agreement granting Gesa a security interest in
11 the boat and trailer.⁶ New certificates of title were not issued
12 for the boat and trailer. A search of the Washington State
13 registry system on September 24, 2007 reflects that the registered
14 owner and the legal owner of the boat and trailer remain Tony
15 Courson and First Security Bank respectively.⁷

16 6. About a year after Buxton purchased the boat and trailer
17 he learned that there was no title for either. He contacted Gesa
18 which advised him that "there wasn't a title."⁸

19 7. On May 6, 2004, Anthony Courson filed a Chapter 7 case
20 with this court under cause #04-03686. Courson's voluntary
21 petition is captioned "Anthony W. Courson, aka Randall's II Auto
22

23 ⁴[AP # 153-1 pg. 19]

24 ⁵[AP #153-1 pg. 33]

25 ⁶[AP #153-1 pg. 29-31]

26 ⁷[AP #147-2 pg. 38-39].

27 ⁸[AP #153-1 pg. 6, dep pg. 18 ln 25 through pg. 19 ln 25].

1 Sales..."⁹ His statement of affairs reflects he received a
2 substantial income from "Randall's" in the 3 years preceding the
3 filing of his bankruptcy.¹⁰ Wells Fargo's own credit recovery notes
4 reflect that Courson had an ownership interest in Randall's during
5 the period of the events in question.¹¹ It is unclear what
6 relationship Courson had with Randall's at the time of his purchase
7 of the boat and trailer in 2000, the sale of the boat to Buxton, or
8 when he filed for bankruptcy.

9 8. On October 27, 2004, Wells Fargo filed this adversary
10 proceeding against "Anthony W. Courson, aka Randall's II Auto
11 Sales, Stephanie Courson and John Doe, Holders of its security;
12 husband and wife and their marital community" under cause #04-
13 03686. The complaint objects to the discharge of Anthony Courson's
14 debt to Wells Fargo on the grounds that he wrongfully disposed of
15 the boat and trailer without paying off Wells Fargo, creating a non
16 dischargeable debt pursuant to 11 U.S.C. § 523 (a)(6).

17 9. On May 30, 2005, the boat was run aground on the Columbia
18 River and severely damaged.¹²

19 10. At the time of the accident the boat and trailer were
20 insured under Safeco Insurance policy #M1407996. The insured on
21 the policy was Jeffrey M. Buxton and the loss payee was Gesa Credit
22
23

24 ⁹[MC #1]

25 ¹⁰[MC # 6 pg. 1]

26 ¹¹[AP# 255 pg. 4; AP# 240 pgs. 12 & 15].

27 ¹²[AP #147-2 pg. 23-26]

1 Union. The policy ran from May 28, 2005 through May 28, 2006.¹³

2 11. As a result of the accident, Safeco paid \$28,000 and
3 \$1,200 respectively for the boat and trailer to Gesa Credit Union
4 by checks dated July 14, 2005 and July 26, 2005.¹⁴

5 12. On October 24, 2005, this court entered a judgment
6 against the defendants Anthony and Stephanie in the sum of \$37,
7 874.89 and excepted this judgment from discharge.¹⁵

8 13. On December 6, 2006, Wells Fargo moved to reopen this
9 adversary proceeding and add two additional defendants, Gesa and
10 Safeco,¹⁶ and subsequently filed a Second Amended Complaint adding
11 Gesa and Safeco as defendants.¹⁷

12 DISCUSSION

13 14 I. WELLS FARGO VS. GESA

15 A. DID WELLS FARGO HAVE A SECURITY INTEREST IN THE INSURANCE 16 MONEY PAID TO GESA?

17 A fundamental premise of Wells Fargo's complaint is that it
18 holds a security interest in the money paid by Safeco to Gesa as a
19 result of damage to the boat and trailer. Wells Fargo bases this
20 claim on the installment sale contract entered into between Anthony
21 Courson, buyer, and Randall's Auto Sales Inc., seller, and assigned
22

23 ¹³ [AP #147-2 pg. 1-20]

24 ¹⁴ [AP #134-1 pg. 2 & 4]

25 ¹⁵ [AP #61]

26 ¹⁶ [AP #65]

27 ¹⁷ [AP #69]

1 to First Security Bank.¹⁸ "Tony Courson" was the registered owner
2 of this boat and trailer and First Security Bank was the legal
3 owner shown on the title.¹⁹ Wells Fargo alleges that it is the
4 successor in interest to Security Bank.

5 Wells Fargo claims a perfected security interest in the boat
6 and trailer. It asserts that its security interest extends to the
7 proceeds of its collateral and that those proceeds include the
8 insurance checks made payable to Gesa for the loss of the boat and
9 trailer. Wells Fargo seeks recovery of that money from Gesa, which
10 held only an unperfected security interest in the boat and trailer.
11 Wells Fargo asserts it has priority to Gesa's claim to the money
12 paid by Safeco and that Gesa has converted Wells Fargo's property.

13 The Courson/First Security security agreement dates from June
14 26, 2000. The then applicable version of Washington's Uniform
15 Commercial Code provided:

16 "Proceeds"; secured party's rights on disposition of
17 collateral

- 18 (1) "Proceeds" includes whatever is received upon the
19 sale, exchange, collection or other disposition of
20 collateral or proceeds. Insurance payable by reason
21 of loss or damage to the collateral is proceeds,
22 except to the extent that it is payable to a person
23 other than a party to the security agreement. Any
24 payments or distributions made with respect to
25 investment property collateral are proceeds. Money,
checks, deposit accounts, and the like are "cash
proceeds." All other proceeds are "non-case
proceeds."
(2) Except where this Article otherwise provides, a
security interest continues in collateral
notwithstanding sale, exchange or other disposition
thereof unless the disposition was authorized by the

26 ¹⁸[AP #147-1 pgs. 2-3]

27 ¹⁹[AP #147-1 pgs. 15-16]

1 secured party in the security agreement or
2 otherwise, and also continues in any identifiable
3 proceeds including collections received by the
4 debtor. (Emphasis added)

5 RCWA 62A.9-306 (West 1999).

6 In interpreting the underscored language, in a situation like
7 ours where there are two different security agreements, the first
8 question is which security agreement is the applicable security
9 agreement? Since Wells Fargo is seeking to enforce its security
10 interest, it follows that the provision must be referring to the
11 security agreement Wells Fargo is seeking to enforce. Here
12 Safeco's checks were payable to Gesa. Gesa is not a party to the
13 Security Bank/Wells Fargo/Courson security agreement. Therefore
14 those checks were not proceeds of Security Bank/Wells Fargo's
15 collateral by definition.

16 That is not the end of the analysis. Washington State adopted
17 a revised version of U.C.C. Article 9, effective July 1, 2001.
18 This revised statute deals with proceeds in its definitional
19 section R.C.W. 62A.9A-102 as follows:

20 (64) "Proceeds," except as used in RCW 62A.9A-609(b),
21 means the following property:

22 (A) Whatever is acquired upon the sale, lease, license,
23 exchange, or other disposition of collateral;

24 (B) Whatever is collected on, or distributed on account
25 of, collateral;

26 (C) Rights arising out of collateral;

27 (D) To the extent of the value of collateral, claims
28 arising out of the loss, nonconformity, or interference
 with the use of, defects or infringement of the rights
 in, or damage to, the collateral; or

 (E) To the extent of the value of collateral and to the

OPINION
06/24/09

1 extent payable to the debtor or the secured party
2 insurance payable by reason of the loss or nonconformity
3 of, defects or infringement of rights in, or damage to,
4 the collateral. (Emphasis added)

5 Since the events relevant to this case both precede the
6 adoption of these statutory changes (the creation and perfection of
7 the Security Bank/Wells Fargo/Courson security interest) and
8 follows its adoption (the creation of the Gesa/Buxton security
9 interest, the damage to the collateral, and the payment by Safeco),
10 what version of the statute is applicable? Section R.C.W. 62A. 9A-
11 702(a) provides: "Article 62A.9A R.C.W. applies to a transaction or
12 lien within its scope even if the transaction or lien was entered
13 into or created before July 1, 2001." It is the new provision
14 R.C.W. 62A.9A-102(64)(E), which applies to this case.

15 The new language talks of insurance payable "to the debtor or
16 the secured party." R.C.W. 62A.9A.102(64)(E). The questions
17 remain: which debtor (Courson or Buxton) and which secured party
18 (Security Bank/Wells Fargo or Gesa)?

19 The revised Article 9 defines debtor as follows:

20 (28) "Debtor" means:

21 (A) A person having an interest, other than a security
22 interest or other lien, in the collateral, whether or not
the person is an obligor;

23 (B) A seller of accounts, chattel paper, payment
24 intangibles, or promissory notes; or

25 (C) A consignee.

26 R.C.W. 62A.9A.102(28).

27 This definition clearly applies to Buxton, "a person having an

28 OPINION
06/24/09

1 interest... in the collateral, whether or not the person is an
2 obligor." Although not an obligor of Security Bank/Wells Fargo,
3 Buxton clearly had an interest in the boat and trailer. Buxton is
4 a "debtor" under the revised code. This analysis is consistent
5 with the Uniform Commercial Code Comments which provides in part:

6 "By including in the definition of "debtor" all persons
7 with a property interest (other than a security interest
8 in or other lien on collateral), the definition includes
9 transferees of collateral, whether or not the secured
party knows of the transfer or the transferee's
identity." U.C.C. § 9-102, cmt. 2(a) (2005).

10 Buxton fits this definition of debtor in regard to the Security
11 Bank/Wells Fargo security interest. If the Safeco checks were
12 payable to Buxton, they would qualify as proceeds of Security
13 Bank/Wells Fargo's collateral pursuant to R.C.W. 62A.9A-102(64)(E).
14 The Safeco checks are not payable to Buxton but to Gesa alone.

15 The process of working through the language of Revised Article
16 Nine as adopted in Washington, demonstrates that at least under the
17 Revised Article Nine, the definition of a term might differ
18 depending on the factual context. With this in mind, we look to
19 see whether the Revised Article's definition of "secured party"
20 changes when applied to the facts of our case.

21 The Revised Article Nine defines a secured party as follows:

22 (72) "Secured Party" means:

23 (A) A person in whose favor a security interest is
24 created or provided for under a security agreement,
25 whether or not any obligation to be secured or outstanding;

26 OPINION
27 06/24/09

- 1 (B) person that holds an agricultural lien;
2 (C) A consignor;
3 (D) A person to which accounts, chattel paper, payment
4 intangibles, or promissory notes have been sold;
5 (E) A trustee, indenture trustee, agent, collateral
6 agent, or other representative in whose favor a security
7 interest or agricultural lien is created or provided for;
8 or
9 (F) A person that holds a security interest arising under
RCW 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5),
62A.4-210, or 62A.5-118.

9 RCW 62A.9A-102(72), (emphasis added).

10 Sub section (A) ties the definition to a "security agreement."

11 A security agreement is defined as follows:

12 (73) "Security agreement" means an agreement that creates
13 or provides for a security interest.

14 R.C.W. 62A.9A-102(73).

15 The secured party is defined in reference to a specific
16 security agreement. The security agreement creating the security
17 interest, which Wells Fargo is attempting to enforce in this
18 litigation, is the Courson/First Security Bank security agreement.
19 When interpreting who is "the secured party" referred to in R.C.W.
20 62A.9A-102(64)(E), the secured party identified must be Wells Fargo
21 in order for it to prevail. Under that definition the insurance
22 payable by loss of the collateral must be payable to "the secured
23 party" to qualify the insurance proceeds as "proceeds" of Wells
24 Fargo's collateral. The Safeco checks were not payable to Wells
25 Fargo, but to Gesa. Therefore those checks do not qualify as
26 "proceeds" of Wells Fargo's collateral under R.C.W. 62A.9A-
27 102(64)(E). Since the checks are not proceeds of Wells Fargo's

28 OPINION
06/24/09

1 collateral, Wells Fargo has no priority over Gesa's admittedly
2 imperfected security interest in the checks.

3 Gesa has a security interest, albeit unperfected, in the
4 Safeco money as a result of its security agreement with Buxton.
5 Its security interest prevails over Wells Fargo's claim because
6 Wells Fargo has no interest in that money under the Washington
7 Revised U.C.C. definition of proceeds.

8 B. DID WELLS FARGO HAVE AN EQUITABLE INTEREST IN THE MONEY
9 PAID TO GESA?

10 Wells Fargo asserts that it had an equitable lien in the money
11 paid to Gesa. The court must decide if such an equitable lien
12 exists or existed in the money paid to Gesa.

13 1. What is an equitable lien?

14 The Washington Supreme Court, in the case of Nelson et al. v.
15 Nelson Neal Lumber Co. et al, 171 Wash. 55, 17 P.26 626 (1932)
16 said:

17 [I]t becomes proper to define the nature of an equitable
18 lien.

19 'It is a right of a special nature over property,
20 constituting a charge or incumbrance thereon, so that the
21 property itself may be proceeded against in an equitable
22 action, and be either sold or sequestered upon proof of a
23 contract out of which the lien could grow, or of a duty
24 on the part of the holder of the property, so as to give
25 the other party a charge or lien upon it. *** While such
26 lien may be thus susceptible of enforcement, it is,
27 nevertheless, but a mere floating and ineffective equity
28 until such time as a judgment or decree is rendered
actually subjecting the property to the payment of the
debt or claim.' Langford v. Fanning (Mo. App.) 7
S.W. (2d) 726, 728.

'An equitable lien is the right to have property
subjected in a court of equity to the payment of a claim.
*** It is neither a debt nor a right of property, but a
remedy for a debt. It is simply a right of a special

OPINION
06/24/09

1 nature over the property which constitutes a charge or
2 incumbrance thereon, so that the very property itself may
3 be proceeded against in an equitable action and either
4 sold or sequestered under a judicial decree and its
5 proceeds in one case, or its rents and profits in the
6 other, applied upon the demand of the creditor in whose
7 favor the lien exists.' Kukuk v. Martin, 331 Ill. 602,
8 163 N.E. 391, 392.

9 171 Wash. at 60-61, 17 P.2d at 628.

10 Thus, an equitable lien is not a right in property but rather
11 a remedy for debt. It is ineffective until a judgment is rendered
12 declaring the lien.

13 2. What conditions support the declaration of an equitable
14 lien?

15 a. Types of equitable lien

16 The Washington Supreme Court has recently restated the
17 principles upon which an equitable lien can be declared.

18 An equitable lien "will be enforced in equity
19 against specific property, though there is no valid lien
20 at law; equity imposes liens either to carry out the
21 intention of the parties to give a security or to prevent
22 injustice, regardless of the intent." Henry L.
23 McClintock, Handbook of the Principles of Equity § 118,
24 at 319 (2d ed. 1948). Equitable liens fall into two
25 categories: (1) "[t]hose created to give effect to an
26 intention of the parties to secure payment of an
27 obligation by subjecting to the payment of an obligation
28 specified property, such as equitable mortgages and
equitable pledges," and (2) those created by the court to
protect a party against inequitable loss, regardless of
intent. *Id.*

Sorenson v. Pyeatt et al, 158 Wash.2d 523, 530 n.9, 146 P.3d 1172,
1175 n.9 (2006).

The first category of equitable liens secures the intentions
of the parties. Wells Fargo and Gesa did not intend to deal with
each other; therefore, they had no mutual intentions to be
enforced. An equitable lien can not be declared based on this

OPINION
06/24/09

1 category of equitable liens.

2 The second category of equitable liens protects against an
3 inequitable loss. It is under this category that Wells Fargo seeks
4 a lien.

5 b. Limitations on Equitable Liens

6 The seminal Washington case on the issue of equitable liens is
7 Falconer v. Stevenson, 184 Wash. 438, 51 P.2d at 619 (1935). It
8 speaks of the limits of the remedy:

9 But the doctrine of equitable lien has its prescribed
10 boundaries as well as that of subrogation; it is not a
11 limitless remedy to be applied according to the measure
12 of the conscience of the particular chancellor any more
13 than, as an illustrious law writer said, to the measure
14 of his foot.

15 184 Wash. at 442, 51 P.2d at 619.

16 The appellants in Sorenson urged the court to adopt a more
17 expansive interpretation. The court declined this invitation
18 saying in part:

19 [I]t is a well established rule that an equitable remedy
20 is an extraordinary, not ordinary form of relief. Henry
21 L. McClintock, Handbook of the Principles of Equity § 22,
22 at 47 (2d ed. 1948). A court will grant equitable relief
23 only when there is a showing that a party is entitled to
24 a remedy and the remedy at law is inadequate. Orwick v.
25 City of Seattle, 103 Wash.2d 249, 252, 692 P.2d 793
26 (1984).

27 Sorenson v. Pyeatt, 158 Wash.2d at 531, 146 P.3d at 1176.

28 The Sorenson decision refers to a number of circumstances
where equitable liens can be imposed including securing property
settlement, alimony payments, the award of community property, and
imposing an equitable lien where defendant purchased a property
with money embezzled from the plaintiff. Ibid. 158 Wash. at 536,
146 P.3d at 1177. Sorenson stands for the proposition that the

OPINION
06/24/09

1 equitable lien remedy is a narrow one to be applied only in certain
2 limited and recognized circumstances.

3 c. Equitable Liens in Insurance Proceeds

4 One of the areas where Washington courts have recognized
5 equitable liens as an appropriate remedy deals with insurance
6 proceeds where the first party has covenanted to insure property
7 against loss for the benefit of a second party but has taken
8 insurance only in his own name. In such cases the courts will
9 impose an equitable lien on the insurance proceeds for the benefit
10 of the second party. Wells Fargo has cited such a case, Cook et al
11 v. Commellini et al., 196 Wash. 125, 82 P.2d 143 (1938), in support
12 of its position. A number of other Washington cases recognize the
13 propriety of imposing an equitable lien in this limited
14 circumstance. Geer v. Tonnon, 137 Wash.App. 838, 155 P.3d 163
15 (2007); Nelson v. Nelson Neal Lumbar Co., 171 Wash. 55, 17 P.2d 626
16 (1932), Robbins v Milwaukee Mechanics' Ins Co., 102 Wash. 539, 173
17 P.634 (1918).

18 Here Wells Fargo seeks to expand the concept of equitable
19 liens beyond the limited scope of the facts in the cases above
20 cited. It is not seeking to establish an equitable lien against
21 Courson its debtor, who had covenanted to keep the collateral
22 insured for the benefit of First Security Bank. Nor does it seek
23 to establish an equitable lien against Buxton, Courson's successor
24 in interest, who might arguably be bound by the covenant to insure
25
26
27

1 for the benefit of Wells Fargo.²⁰ It did not sue Buxton, rather it
2 seeks to impose and enforce an equitable lien against Gesa, a party
3 with which it did not deal.

4 d. Can equitable liens be enforced against third parties?

5 The attempt to extend the doctrine of equitable lien beyond
6 the narrow confines of existing law was explicitly rejected in the
7 case of Sorenson v. Pyeatt. There the court in rejecting a plea to
8 "step outside the parameters" of the existing case law said:

9 It must be kept in mind that an equitable lien is a
10 remedy for debt determined to be owed in law. See
11 Ellensburg, 66 Wash.App at 252 835 P.2d 225 (citing
12 Nelson v. Nelson Neal Lumber Co., 171 Wash. 55, 61, 17
13 P.2d 626 (1932)). In each equitable lien case brought to
14 our attention, an equitable lien was imposed only upon
15 the property or interest owned by the person incurring
16 the debt.

17 Sorenson v. Pyeatt, 158 Wash.2d at 537, 146 P.3d at 1178-1179. The
18 court then continued:

19 In sum, the Lenders have not provided this court
20 with authority which establishes that a Washington court
21 may impose an equitable lien upon the property of a third
22 party in order to satisfy a judgment entered against
23 another person who has been determined to legally owe the
24 debt. What is more, applying general equity principles,
25 we do not see how we would be preventing an injustice by
26 allowing the legal rights of Sorenson in this case to be
27 cut down in order to provide the Lenders a "meaningful"
28 remedy for Barbara Pyeatt's fraudulent conduct.

29 Ibid., 158 Wash.2d at 538, 146 P.3d at 1179.

30 Tony Courson is the person that owes the debt to Wells Fargo.
31 Wells Fargo is seeking to impose and enforce an equitable lien

32 ²⁰Greer v. Tonnon, 137 Wash. App. at 848, 155 P.3d at 168; Cook v.
33 Commellini, 196 Wash.125, 82 P.2d 143; Robbins v. Milwaukee Mechanics' Ins.
34 Co., 102 Wash. at 542, 173 P.2d 635 (1918)

1 against Gesa, a party not liable for Courson's debt. Applying
2 Sorenson, Wells Fargo is not entitled to an equitable lien against
3 Gesa, unless some general equity principle should be invoked to
4 prevent an injustice.

5 e. The relative equities between the parties

6 Security Bank/Wells Fargo financed Courson's purchase of a
7 boat and trailer from Randall's and perfected its security
8 interest. Courson had some interest in, or position with,
9 Randall's. Randall's sold the Courson boat and trailer to Buxton,
10 who financed the purchase through Gesa, which took a security
11 interest in the collateral although that security interest was not
12 perfected. Neither Buxton nor Gesa were aware at the time that the
13 boat and trailer were First Securities/Wells Fargo's collateral.
14 Buxton, and then Gesa, learned about the title problem on the
15 collateral about a year after the purchase. Buxton insured the
16 boat and trailer with Safeco and made Gesa the loss payee on the
17 policy. The boat was destroyed and Safeco paid Gesa for the loss
18 pursuant to the policy. Only after the loss was paid did Safeco
19 learn of Wells Fargo's interest.

20 Wells Fargo, Buxton and Gesa are all innocent victims of
21 Courson's misdeeds. It is not clear why equity would intervene to
22 benefit one innocent party against another. Wells Fargo argues
23 that Gesa was somehow negligent in the transaction and, therefore,
24 the loss should fall on it. On facts much more egregious, in
25 Sorenson v. Pyeatt, the court refused to impose an equitable lien
26 on Sorenson's property despite the fact that she had participated
27 in activity that amounted to a fraudulent transfer of the property

28 OPINION
06/24/09

1 to avoid creditors and possibly even drug enforcement officials.
2 158 Wash.2d at 528, 146 P.3d at 1174. If such conduct did not
3 justify imposition of an equitable remedy, the relatively innocent
4 action of Gesa in this case does not support an equitable remedy.

5 f. Is there an adequate remedy at law?

6 The Sorenson court discusses this requirement as follows:

7 [I]t is a fundamental maxim that equity will not
8 intervene where there is an adequate remedy at law.
9 Accord Orwick, 103 Wash.2d 249, 692 P.2d 793; McClintock,
10 *supra*, § 22, at 48; 30A C.J.S. *Equity* § 25 (1992). In
11 determining whether to exercise equitable powers,
12 Washington courts follow the general rule that equitable
13 relief will not be accorded when there is a clear,
14 adequate, complete remedy at law. City of Lakewood v.
15 Pierce County, 144 Wash.2d 118, 126, 30 P.3d 446 (2001).
16 Furthermore, we think it a good equity policy that the
17 person against whom the legal remedy is sought and
18 authorized should be the same person against whom the
19 equitable remedy is sought. Accord McClintock, *supra*, §
20 23; 30A C.J.S., *supra*, § 94.

21 158 Wash.2d at 543, 146 P.3d 1182.

22 The respondents in Sorenson had argued that their remedy at law
23 against Pyeatt was inadequate because Pyeatt did not have enough
24 funds and property to pay the judgment. The court dismissed this
25 argument observing that the remedy at law was valid, even if the
26 likelihood of payment was small. Ibid., 158 Wash.2d at 544, 146
27 P.3d 1182.

28 In this case, Wells Fargo has a valid remedy at law against
Courson in this court's non-dischargeable judgment against him.
Its questionable collectability does not alter that fact. In any
event, Wells Fargo seeks an equitable remedy against Gesa, who is

OPINION
06/24/09

1 not liable at law, and such equitable relief is not available under
2 Sorenson.

3 C. WELLS FARGO'S OTHER ARGUMENTS FOR RELIEF

4 Wells Fargo in its pleading refers to a number of other
5 remedies which entitle it to relief against Gesa.
6

7 1. Conversion

8 Wells Fargo asserts that Gesa converted the proceeds of its
9 collateral. Conversion has been defined by Washington courts as
10 follows:
11

12 "A conversion is a willful interference with a chattel
13 without lawful justification, whereby a person entitled
14 thereto is deprived of the possession of it." Paris Am.
15 Corp. V. McCausland, 52 Wash.App. 434, 443, 759 P.2d
16 1210 (1988) (quoting Olin v. Goehler, 39 Wash.App. 688,
17 693, 694 P.2d 1129, review denied, 103 Wash.2d 1036
18 (1985)). When a debtor transfers collateral subject to a
19 perfected security interest, the secured party may
20 commence an action against the purchaser for conversion.
21 See, e.g., Washington State Bank v. Medalia Healthcare,
22 L.L.C., 96 Wash.App. 547, 550-52, 984 P.2d 1041 (1999).

23 Western Farm Services Inc. v. Olsen, 151 Wash.2d 645, at 648 n.1,
24 90 P.3d 1053, at 1054 n.1 (2004).
25

26 The problem with this argument is that Wells Fargo did not
27 have a perfected security interest in the insurance proceeds
28 pursuant to R.C.W. 62A.9A.102 (64) (E).

29 If Wells Fargo had been successful in establishing an
30 equitable lien that would not be enough to support an action for
31 conversion. Greer v. Tonnon, 137 Wash.App. at 846 n.5, 155 P.3d at

32 OPINION
33 06/24/09

1 168 n.5 (2007).

2 Wells Fargo has no cause of action for conversion against
3 Gesa.

4
5 2. Replevin

6 In order for Wells Fargo to prevail on a claim against Gesa
7 for replevin it would have to prove that it was the owner or held a
8 security interest in the Safeco money, which was being wrongfully
9 withheld. R.C.W. 7.64.020(2)(a) & (b). To prevail, Wells Fargo
10 must rely on the strength of its own security interest or right to
11 possession. Graham v. Notti, 147 Wash.App. 629, 635, 196 P.3d
12 1070, 1072 (2008). Since Wells Fargo has no security interest in
13 the Safeco insurance proceeds, nor right to possession of them, it
14 is not entitled to replevin against Gesa.
15

16
17 3. Execution

18 A precondition for issuance of an execution is a judgment at
19 law or at equity. Since Wells Fargo has neither against Gesa it is
20 not entitled to this remedy.
21

22 D. SUMMARY: WELLS FARGO v. GESA

23 Wells Fargo had no security interest in the Safeco money paid
24 to Gesa. It is not entitled to an equitable lien, actions for
25 conversion or replevin, nor for execution against Gesa. Wells
26
27

28 OPINION
06/24/09

1 Fargo's complaint against Gesa should be dismissed with prejudice.

2 II. WELLS FARGO v. SAFECO

3 When Buxton purchased the boat and trailer, and Gesa financed
4 Buxton's purchase, both parties were unaware of the existing
5 security interest. Gesa took a security interest in the boat and
6 trailer. Pursuant to his agreement with Gesa, Buxton purchased
7 insurance from Safeco to protect in case of loss of the collateral.
8 The policy named Gesa as loss payee in case of damage to or
9 destruction of the collateral. Both Buxton and Gesa subsequently
10 learned that the boat and trailer were the subject of a competing
11 security interest. The boat was destroyed in an accident. A claim
12 was made on the policy and Safeco paid Gesa \$29,200.00 for loss of
13 the boat and trailer. After paying Gesa, Safeco discovered in the
14 course of attempting to obtain the certificates of title and
15 possession of the damaged hulk and trailer that the title was
16 contested. Safeco never acquired title or possession. Wells Fargo
17 sued Safeco for the insurance proceeds paid to Gesa.

18 A. The Contract, Insurance Law and Regulations

19 Buxton purchased a policy of insurance from Safeco protecting
20 him from loss or damage to the boat and trailer. Gesa was named as
21 loss payee on the policy. Safeco had no contractual relationship
22

23
24
25
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27
28 OPINION
06/24/09

1 with Wells Fargo. Buxton, Gesa and Safeco did not intend Wells
2 Fargo to be a beneficiary under the insurance contract.

3 The law in Washington has long been established that property
4 insurance is a personal contract and does not run with the property
5 itself. As the court said in Davis v. Oregon Mutual Insurance Co.,
6 71 Wash.2d 579, 580, 429 P.2d 886, 887 (1967), in a case dealing
7 with fire insurance:
8

9 The rule is that a policy of fire insurance is a personal
10 contract and does not run with the land, its purpose
11 being not to insure property against fire, but to insure
12 the owner of the property against loss by fire.
13 Fireman's Fund Ins. Co. v. Devonshire, 170 Wash 207, 16
P.2d 202 (1932); 44 C.J.S. Insurance s 224 (1945). As
stated in 1 Couch, Insurance s 1.7, at 33 (2d ed. 1959):

14 (A)n assignment or conveyance of the property does not
15 transfer any rights with respect to the insurance, unless
16 the insured makes an express assignment thereof, with the
17 insurer's consent, or unless by express stipulation of
18 the parties it is made to run with the subject matter, or
the contract is so framed as to attach the risk
inseparably to the property, as where the insurance is on
account of the 'owners,' or for whom it may concern, or
where the loss is payable to the 'bearer.'

19 See also Greer v. Tonnon, 137 Wash.App. 838, 849-850, 155 P.3d 163,
20 169 (2007). Wells Fargo is neither an insured nor a beneficiary
21 under the terms of the Safeco policy. No contractual relationship
22 exists between it and Safeco.

23 Wells Fargo argues that this rule has been modified by the
24 adoption of WAC sections 284-21-010 and 284-21-990. These
25 regulations proscribe uniform terms for the "Loss Payable
26
27

28 OPINION
06/24/09

1 Endorsement" applicable to property insurance in the State of
2 Washington. This uniform endorsement provides in pertinent part:

3 1. Loss or damage, if any, under this policy shall be
4 payable first to the loss payee or mortgagee (hereinafter
5 called secured party), and, second, to the insured, as
6 their interests may appear; Provided, That, upon demand
7 for separate settlement by the secured party, the amount
8 of said loss shall be paid directly to the secured party
9 to the extent of its interest.

10 WAC 284-21-990 (2009).

11 Wells Fargo asserts that, pursuant to this regulation, it is the
12 "secured party" referred to in the endorsement because it has a
13 perfected security interest in the boat and trailer.

14 The regulation however does not mention a perfected security
15 interest. Rather it refers to "the loss payee or mortgagee
16 (hereinafter called secured party)." The loss payee on the Safeco
17 policy is Gesa. Gesa is also a mortgagee/secured party in the
18 collateral, and it is immaterial that its security interest may not
19 have priority over Wells Fargo. Buxton, the purchaser of the
20 insurance, benefitted from the payment to Gesa for the loss of the
21 collateral partially satisfying Buxton's obligation to Gesa. This
22 is what Buxton contracted for with Safeco. The loss payable
23 endorsement language does not add Wells Fargo as a party to the
24 contract or a beneficiary thereto.

25 Wells Fargo next argues that the Washington Administration

1 Code provisions found in the "Trade Practice Unfair Settlement
2 Practices" chapter, WAC 284-30, supports its claims against Safeco.
3 These regulations were promulgated by the Washington State
4 Insurance Commissioner pursuant to the authority granted in R.C.W.
5 48.30.010 to deal with unfair or deceptive practices.²¹
6

7 Wells Fargo categorizes itself as a "first party claimant" as
8 defined in these regulations. This term is defined in WAC 284-30-
9 320 as follows:
10

11 ...
12 (3) "First party claimant" means an individual,
13 corporation, association, partnership or other legal
14 entity asserting a right to payment under an insurance
15 policy or insurance contract arising out of the
16 occurrence of the contingency or loss covered by such
17 policy or contract;

18 Wells Fargo argues on the basis of this provision that it is
19 asserting a right to payment under the Buxton/Gesa/Safeco policy;
20 therefore it is a "first party claimant," entitled to sue Safeco.
21 Wells Fargo's interpretation would allow anyone who asserted any
22 claim for payment under an insurance policy status as a "first
23 party claimant." This argument gives too expansive an
24 interpretation to the WAC provision.

25 The definition "first party claimant" is found in the
26 Washington Administrative Code chapter 284-30 "Trade Practices

27 ²¹WAC 284-30-300 (2009)

1 Unfair Settlement Practices." A review of the provisions in this
2 chapter that use the term "first party claimant" all deal with the
3 handling of insurance claims.²² There is no suggestion in these
4 provisions that they expand the parties to the insurance contract
5 or create a new cause of action on the policy such as urged by
6 Wells Fargo.

8 WAC 284-30-320, the section in which the term "first party
9 claimant" is defined, includes the following additional definition:
10

11 (8) "Third party claimant" means an individual,
12 corporation, association, partnership or other legal
13 entity asserting a claim against any individual,
14 corporation, association, partnership or other legal
15 entity insured under an insurance policy or insurance
16 contract of an insurer.

17 The regulatory scheme contained in WAC chapter 284-30, shows
18 that it is defining claims settlement practices which might be
19 unfair or deceptive. The regulations distinguish between claims
20 brought by "first party claimants" who are parties to the insurance
21 contract, and "third party claimants" who are asserting a claim
22 against a party insured under the policy or contract.

23 Applying these definitions to Wells Fargo's position, it
24 appears that Wells Fargo is not "asserting a right to payment under
25

26 ²²Misrepresentation of Policy Provisions, WAC 284-30-350 (2009);
27 Failure to Acknowledge Pertinent Communications, WAC 284-30-360
28 (2009); Standards for Prompt, Fair and Equitable Settlements
Applicable to All Insurers, WAC 284-30-380 (2009).

1 an insurance policy or contract" but is asserting a claim against
2 Gesa an entity insured under the policy. Wells Fargo, rather than
3 qualifying as a "first party claimant," is a "third party claimant"
4 under these WAC definitions. This categorization might entitle
5 Wells Fargo to different treatment in the settlement of insurance
6 claims but that does not elevate it to the status of a party that
7 can sue directly on the insurance contract.
8

9
10 Wells Fargo complains that Safeco has engaged in unfair and
11 deceptive practices as defined in R.C.W. § 48.10.030 and WAC 284-
12 30-330(7).²³ Specifically Wells Fargo alleges that "it is an unfair
13 practice to 'compel insured to institute litigation to obtain
14 amounts due'" and that Safeco acted in bad faith in dealing with
15 Wells Fargo in this matter.²⁴
16

17 These allegations are not well founded. Wells Fargo is not an
18 insured under the Safeco policy or pertinent insurance regulations.
19 As a third party claimant it has no direct rights of action against
20

21
22 ²³WAC 284-30-330. Specific unfair claims settlement practices
defined.

23 The Following are hereby defined as unfair methods of competition
24 and unfair or deceptive acts or practices in the business of
insurance, specifically applicable to the settlement of claims:

25 (7) Compelling insureds to institute or submit to litigation,
arbitration, or appraisal to recover amounts due under an insurance
26 policy by offering substantially less than the amounts ultimately
recovered in such actions or proceedings

27 ²⁴[AP #69 pg 6-7]

1 Safeco for Consumer Protection Act or Unfair Practice violations.

2 Tank v. State Farm Fire and Casualty Co., 105 Wash.2d 381, 392, 715
3 P.2d 1133, 1141 (1986).

4
5 B. Tort

6 1. Negligence

7 Wells Fargo asserts that Safeco was negligent when it paid
8 Gesa the insurance proceeds without first checking the title of the
9 collateral. Perfection of a security interest on the title of
10 collateral does not provide an insurer notice of that interest.
11 International Harvester Credit Corporation v. Valdez, 42 Wash.App.
12 189, 195, 709 P.2d 1233, 1236 (1985). It is not necessary for an
13 insurer to conduct a title search before settling an insurance
14 claim. Chrysler Credit Corp. v. Smith, 434 Pa.Super.429, 438, 643
15 A.2d 1098, 1102 (1994); Judah AMC & Jeep, Inc. v. Old Republic
16 Insurance Co., 293 N.W.2d 212, 214 (Iowa 1980). Safeco had no duty
17 to search the title records before paying Gesa's claim on the
18 policy.
19

20
21
22 2. Conversion

23 Wells Fargo asserts that Safeco converted Wells Fargo's
24 property when it paid Gesa. This court has ruled that, Wells Fargo
25 did not have a security interest in the money paid by Safeco to
26
27

1 Gesa. R.C.W. 62A.9A-102(64)(E). Safeco could not have converted
2 Wells Fargo's property.

3 Wells Fargo also argues that it had an equitable lien on the
4 money paid to Gesa. This court has ruled in this decision that
5 Wells Fargo did not have an equitable lien against Gesa. The
6 reasoning on that issue is equally applicable to Wells Fargo's
7 claim of an equitable lien against Safeco. Wells Fargo did not
8 have an equitable lien on the money paid by Safeco to Gesa. Even
9 if an equitable lien had been proven, it would not support an
10 action for conversion against Safeco. Greer v. Tonnon, 137
11 Wash.App at 846 n.5, 155 P.3d at 168 n.5 (2007).
12

13
14
15 C. Replevin

16 To prevail on this theory, Wells Fargo must prove Safeco has
17 in its possession Wells Fargo's property and is wrongfully
18 withholding that property. R.C.W. 7.64.020(2)(a) & (b). Safeco
19 does not have possession of the money at issue, it has been paid to
20 Gesa. In any event, Wells Fargo had no security interest in the
21 money at issue. R.C.W. 62A.9A-102(64)(E). Wells Fargo is not
22 entitled to replevin against Safeco.
23

24
25 D. Execution

26 Wells Fargo has no judgment against Safeco, therefore its
27

1 request for a writ of execution should be denied.


2 E. SUMMARY: WELLS FARGO v. GESA

3 Wells Fargo had no security interest in the money paid by
4 Safeco to Gesa. Safeco did not violate any insurance law or
5 regulations in paying the Gesa claim. Wells Fargo had no equitable
6 lien in the insurance proceeds. Wells Fargo's action for
7 conversion replevin or execution against Safeco should be denied.
8 Wells Fargo's complaint against Safeco should be dismissed with
9 prejudice.
10
11

12 CONCLUSION

13 Wells Fargo's motions for summary judgment against Gesa and
14 Safeco should be denied. Gesa's and Safeco's motions for summary
15 judgment against Wells Fargo should be granted. Wells Fargo's
16 complaint against Gesa and Safeco should be dismissed with
17 prejudice.
18

19 Done this 24 day of June, 2009
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29

JOHN A. ROSSMEISSEL
BANKRUPTCY JUDGE

OPINION
06/24/09